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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,394	01/04/2005	Ezat Khoshdel	J3678(C)	5147
201 7590 05/11/2009 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER				
FOLEY, SHANON A				
ART UNIT		PAPER NUMBER		
1619				
MAIL DATE		DELIVERY MODE		
05/11/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,394

**Applicant(s)**

KHOSHDEL ET AL.

**Examiner**

SHANON A. FOLEY

**Art Unit**

1619

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/5/8.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

The Group and/or Art Unit of your application has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1619, Examiner Foley.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 5, 2008 has been entered.

An up-dated search revealed new prior art that is required to be made of record.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton et al. (WO 96/10387) and Moeller et al. (US 4,833,147, provided in the IDS of 12/7/07).

Applicant summarizes the invention and helpfully provides formula structures for xanthine, theophylline, and caffeine. Applicant states that the formula provided in instant claim 4 differs from the xanthine and substituted xanthines since R<sup>3</sup> is required as a C1 to a C5 alkyl rather than H. Applicant argues that the substituted xanthine compounds required by instant claims 4, 5 and 20 are not taught in the prior art.

Applicant's arguments, a review of the formulas provided and the prior art is found persuasive.

However, Moeller et al. teach a hair methods of treating hair with a composition that includes substituted purines, such as theophylline, theobromine and caffeine, see claims 1-3 and 8.

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have used the caffeine of Moeller et al. in the method of Barton et al. with a reasonable expectation of success since the teachings of Barton et al. encompass any xanthine derivative, see page 2, lines 15-18 and claims 1 and 3.

Applicant further asserts that there is no suggestion in the prior art that suggests a combination of an  $\alpha$ -hydroxy acid and a xanthine component to lengthen or style hair. Applicant states that Barton et al. does not teach or suggest how the hair styling products provide hair growing benefits.

Applicant's arguments and a review of the teachings of Barton et al. have been fully considered, but are found unpersuasive.

The deficiencies discussed by applicant are ameliorated by the teachings of Moeller et al. Moeller et al. exemplify a "Fast-acting hair treatment-emulsion", see section 3.2 of Example III in column 5.

While neither Barton et al. nor Moeller et al. specifically discuss lengthened, decreased volume or increased humidity retentive properties of the treated hair, it is determined that the instantly required ingredients and the method steps are rendered prima facie obvious from the combined teachings of Barton et al. and Moeller et al. Therefore, the intended results

accomplished by the combined teachings of Barton et al. and Moeller et al. would have been inherently produced.

Although neither Barton et al. nor Moeller et al. teach the range of ingredients required by the claims, determining the amounts of ingredients taught to be beneficial by the cited references is a matter of routine optimization by one of ordinary skill in the art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANON A. FOLEY whose telephone number is (571)272-0898. The examiner can normally be reached on M-F 5:30 AM-3 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shanon A. Foley/  
Primary Examiner  
Art Unit 1619